IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Pokharmal vs. The State of Rajasthan.

1. D.B.Cri. Appeal No.553/2001

Ram Singh vs. The State of Rajasthan

2. D.B.Cri Appeal No.670/1999

Under Section 374 (2) Cr.P.C. against the judgment and conviction dated 29.06.01 passed by the Addl. Sessions Judge, Gulabpura, in Sessions Case No. 106/2000.

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Date of Order: **30th July, 2007.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Miss Kausar Parveen with
Mr.Mukesh Vyas for the appellants.
Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

These two appeals are in relation to two separate judgments of the two accused persons who were named as accused persons in one incident. Accused Pokharmal was at large. At the

time when Ram Singh was tried , Pokharmal had eloped. While deciding the case of Ram Singh, the trial court has come to the conclusion that it was not a case of pre-meditated fight . The occurrence occurred on the spur of the moment and in that background, accused Ram Singh has been convicted under section 323 IPC. In separate judgment when the trial was conducted against Pokharmal the trial court has stated that since he had caused injury on head, therefore, he is guilty under section 302 IPC.

The learned counsel appearing for the appellant has not challenged the fact of the incident but has urged that as the case against Ram Singh has been made out, only under Section 323 IPC, Pokharmal who was his companion, deserve the same treatment. It was a fight which occurred on the spur of the moment. There is no previous enmity. When the stick was hit on the deceased on the head the stick was broken. There is mention of the broken stick in the statement of witnesses. It has come that Ram Singh also inflicted injuries by stick. If Ram Singh caused injuries by stick, and has been convicted under section 323 IPC, then a different treatment cannot be given to Pokharmal. In that light of the matter , the learned counsel has urged that Pokharmal deserves to be convicted under section 325 IPC only.

Per contra, the learned public prosecutor stated that the fight had occurred , though no premeditated fight has taken place, but then it has resulted into death of Bhanwarlal and, therefore, the trial court was right in convicting the accused Pokharmal under section 302 IPC.

We have heard the learned counsel and have given our thoughtful consideration to the material available on record and have noted that Ram Singh has only been convicted under Section 323 IPC. There has been no appeal by the accused. That judgment has become final. If Ram Singh has been convicted under section 323 IPC, then conviction of his companion under Section 302IPC does not appear to be justified, because almost the act of both the accused persons is same. But a grievous hurt is attributed to Pokharmal . Therefore, we hold that he can be convicted under section 325 IPC.

Consequently, we alter his conviction from Section 302 IPC to Section 325 IPC. His conviction under section 341 IPC is maintained. Both the accused persons have remained behind the bars for quite some time. The period already undergone by them is

considered sufficient to meet the ends of justice.

In the result, we allow the appeal of both the accused persons. We sentence accused Ram Singh under section 323 IPC to the period already under gone by him . We alter the conviction of Pokharmal from Section 302 IPC to Section 325 IPC and sentence him to the period already undergone and also his sentence stands altered under section 341 IPC to the period already undergone by him . Pokharmal is behind the bars. He should be released forthwith if not required in any other case.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

L.George